

REMARKS

Claims 1 through 25 are pending in this application. Claim 7 is amended in several particulars for purposes of clarity in accordance with current Office policy, to assist the examiner and to expedite compact prosecution of this application.

LABELING AND CONSIDERING FIGURES 1 AND 2 AS PRIOR ART

Concerning point 5, on page 2 of Paper No. 5, the examiner objected to the drawings and stated that "Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See M.P.E.P. § 608.02(g)." We have labeled Figures 1 and 2 according to the examiner's instructions. Accordingly, a letter to the Office Draftsman accompanies this response. Indication in subsequent Office correspondence of the acceptance to the drawing corrections proposed in the letter, is requested to enable applicant to timely arrange for the corrections to be made prior to the date for payment of any issue fee.

CLAIM OBJECTIONS

The examiner objected to claim 7 concerning the term "driver." The examiner stated that it would appear that "screwdriver" was meant. However, the specification does not mention a screw

driver but clearly states a “driver” and furthermore, figures 5B and 5C shows a depiction of the driver as reference number 58. As stated in *Websters New World Dictionary*, 3rd edition, 1989, dictionary it states that a driver is any machine part that communicates motion to another part. Furthermore, the claim does mention specifically that the driver is tool so that it cannot be confused with anything else. Therefore, there should not be any confusion as to the term driver.

DOUBLE PATENTING

The examiner stated on page 2 through 3 of paper number 5, that claims 1 through 25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6,233,026. The examiner admits that the conflicting claims are not identical but states that they are not patentably distinct from each other.

The Federal Circuit has stated that there must be clear evidence to establish why an alleged variation of an invention claimed in a prior patent would have been obvious. *In re Kaplan*, 789 F.2d 1574, 229 USPQ 678, 683 (Fed. Cir. 1986). The examiner must establish that any variation between the inventions claimed in the claims under consideration and the earlier-issued patent claims would have been obviousness to a person of ordinary skill in the art. The Federal Circuit did not permit use of the disclosed example in the prior patent to determine obviousness-type double patenting. *In re Kaplan* at 683. The Federal Circuit also held that the examiner’s showing of obviousness must follow the analysis used to establish a *prima facie* case of obviousness. *See In re Longi*, 759 F.2d

887, 225 USPQ 645, 651 (Fed. Cir. 1985). The MPEP specifies that “[s]ince the analysis employed in an obvious-type double patenting determination parallels the guidelines for a 35 USC§103 rejection, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 US 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35USC§103 are used when making an obviousness-type double patenting analysis.” MPEP §804. MPEP §804 agrees with the above in “part III. Contrast between double patenting rejection and rejections based on Prior art.” Therefore, the examiner has the initial burden to show that the inventions claimed are not patentably distinct and are based on a *prima facie* showing of obviousness.

The analysis should not focus on what the claim language discloses, but rather on what the claim language defines. *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 23 USPQ 2d 1839, 1845 (Fed. Cir. 1992). The examiner may use the specification to help interpret the claims. Although the patent disclosure cannot be used as prior art, the disclosure can be used to determine the meaning of the claims in view of the disclosed embodiment. *In re Vogel*, 422 F.2d 438, 164 USPQ 619, 622 (C.C.P.A. 1970). However, the examiner may not read the specification into the claims in an effort to buttress a double-patenting rejection.

The examiner fails to provide a *prima facie* case of obviousness-type double patenting because the only proof given by the examiner is that all claims are directed toward a monitor case with the snap fittings and that the lower fitting and upper fittings are substantially the same.

Furthermore, the examiner asserts that the patent claims all the various snap fittings, snap portions, snap pins, shoulder portions, engaging pins, detents, holes and surfaces. The difference the examiner states is in the lower shield which is absent from the instant application.

First of all, the examiner admits that there is a lower shield that is used for the connections and is mentioned throughout all 23 claims of the patent. The structure of the patent is distinct from the present invention. As mentioned in MPEP § 706.02(j), prior art reference (or references when combined) must teach or suggest all the claim limitations. The patent shows the bottom shield being used for connection with the pair of snap members. Whereas in the present invention as mentioned in claim 1 and figures 3 and 9, the front and rear casing are only used for the connection of the snap pin. The patent does not teach or suggest the use of the rear casing but of a bottom shield. A rear casing is shown in figure 3 of the patent but is not used for the connection. Therefore, not all of the claim limitations are being taught or suggested and in fact by having a bottom shield being used to make the connection the patent is teaching away from the present invention.

Secondly, the lower fitting and upper fitting are not relevant in the analysis. The examiner stated that the lower fitting are substantially the same as seen by comparing figure 6 of the present invention and figure 4 of the patent. Figure 6 of the present invention concerns an engaging pin 80 with reinforcing shoulder portions. There is no reference number made for the lower fitting as seen in Figure 4 of the patent and there is no description of the lower fitting made in the specification. The

claims of the patent also fail to mention such a structure. As mentioned above, the analysis must focus on what the claim language defines. *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 23 USPQ 2d 1839, 1845 (Fed. Cir. 1992). Evidently, the patent does not define such a structure and even the drawings in the patent do not attempt to reference such structure.

The examiner further states that the upper fitting is substantially the same as seen by comparing figure 3 of the instant application and figure 3 of the patent. The upper fittings in figure 3 of the patent are not claimed. Figure 3 of the patent does not even bother to label such fittings since they are not being claimed. Again, it is the claimed matter that must be used in the analysis. As mentioned above, the Federal Circuit did not permit use of the disclosed example in the prior patent to determine obviousness-type double patenting. *In re Kaplan* at 683.

Thirdly, the applicant traverses the examiner assertion that the patent claims all the various snap fittings, snap portions, snap pins, shoulder portions, engaging pins, detents, holes and surfaces.

Looking at claim 1 and 21 of the patent (U.S. Patent No. 6,233,026), a snap member is mentioned having a first and second snap pin. Looking at the specification of the patent, the snap member 60 has a first snap pin 61 and a second snap pin 62 spaced away from each other as seen in figure 4 of the patent. The snap member 60 is integrally formed from the casing as also mentioned specifically in claim 1 (col. 5, line 65). The stopping flap 63 as mentioned in claim 1 prevents the snap member from detaching from the through hole 65. Claims 4, 6, 14-21 of the patent also similarly claims the snap members. Claims 7-10, and 22-23 of the patent discuss the support

members 68 which is not taught in the present invention. Claims 11-13 of the patent further defines the snap members as being semi-circular which is clearly different than the invention the claim language defines in the present invention.

On the other hand, in the present invention that the claim language defines, claim 1 mentions a snap portion, engaging pin, and a snap pin working together while as mentioned above, the patent defined by its claims does not. In claim 2 of the present invention, the snap portion is being more narrowly defined as having an elastic plate, a slant surface, a rectangular first aperture. The claims of the patent does not define such feature, nor is it even taught in any of the drawings or specification of the patent. The snap pin as mentioned in claim 1, does not limit the snap pin to be integrally formed from the casing as seen in claim 1 of the patent. The snap pin (100) is separated as seen in Figure 3 of the present invention.

Claims 3-6 further define the engaging portion which is not mentioned in the patent that is defined by its claims. Furthermore, details that are shown in the claims are not taught or suggested by the patent as in claims 5 and 24 of the instant invention, the heights of the guides are less than the height of the first detent. Claims 1-23 of the patent make no mention of the engaging portion. Figure 3 of the patent shows no reference numeral to the engaging portion. Therefore, the patent does not teach or suggest the engaging portion or any of its detailed limitations.

Claim 7 of the present invention talks about a certain gap that is formed between the front and rear casings such that a driver can be inserted for disassembly. Nothing in the claims of the patent defines such a feature. Claims 8-9 of the present invention further define the engaging pin

which is not defined by the claims of the patent.

Claim 10, 25 of the present invention further teaches the snap pin with a polygonal upper body that is not taught or suggested by the patent.

Claim 11 of the present invention teaches a third shoulder portion that is downwardly protruding from one end of the upper body and is fixed at a second hole of the top portion of the outer wall of the first hole. The patent is not secured in such a manner where simply the flap 63 is held within the though hole 65. Therefore, the structure of the present invention is patentably distinct from the patent.

Claim 12 of the present invention mentions that the width of the lower body is less than the distance between the first shoulder portions and the lower body is received between the first shoulder portions when the first member is substantially parallel with the second member. The patent however, makes no mention of such a limitation in any of its 23 claims.

Concerning claim 13-15, 20 of the present invention, the indent portion or the snap portions 60 as shown in figures 5A through 5C are not mentioned in any of claims of the patent. The snap members 60 as seen in figure 4 of the patent are mentioned but this does not teach or suggest indent portions and detent portions. As mentioned above, the analysis should not focus on what the claim language discloses, but rather on what the claim language defines. *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 23 USPQ 2d 1839, 1845 (Fed. Cir. 1992). The examiner may use the specification to help interpret the claims. Although the patent disclosure cannot be used as prior art, the disclosure can be used to determine the meaning of the claims in view

of the disclosed embodiment. *In re Vogel*, 422 F.2d 438, 164 USPQ 619, 622 (C.C.P.A. 1970). Therefore, the snap members cannot be expanded to cover indent portion or snap portion. The present invention shows an easy assembly and disassembly while exhibiting strength in the connection. As mentioned in claim 15, a gap exists where a certain tool can easily disassemble the casing. This is not taught or suggested by the patent.

In claims 16-20 of the present invention, further teaches that the snap pin is engaged in the wall surrounding the first hole, whereas the patent as seen in figure 4 does not have the snap members engaged the wall surrounding the hole but a flap that secures the snap members when the members are pushed through the hole. The engaging pin is also mentioned in the present invention claims but is not mentioned in the claims of the patent.

Therefore, as shown by the analysis above, a *prima facie* obviousness-type double patenting is not proven by the examiner.

REJECTION OF CLAIMS (35 U.S.C. § 103)

On pages 3-4 of Paper No. 5, claims 1, 16, and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Beak (U.S. Patent 5,863,106).

According to MPEP 706.02(j), the following establishes a *prima facie* case of obviousness under 35 U.S.C. §103:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The first point in MPEP 706.02(j) states that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability. *In re Dembiczak*, 50 USPQ.2d 1614 (Fed. Cir. 1999). The showing must be "clear and particular" without broad generalized conclusory statements. *Id.* There must be specific statements showing the scope of the suggestion, teaching, or motivation to combine the prior art references. There must be an explanation to what specific understanding or technical principle would have suggested the combination of references. *Id.*

The mere fact that the teachings of the prior art can be combined or modified does not itself make the resultant *prima facie* obvious. MPEP 2143.01.

Secondly, MPEP 706.02(j) states that there must be a reasonable expectation of success.

The third point in MPEP 706.02(j) states that the prior art reference (or references when

combined) must teach or suggest all the claim limitations.

With reference to claims 1, 16, and 21 of the present invention, Beak does not teach or suggest a snap pin engaging in the first hole accommodating a prevention of the engaging pin from detaching from the first hole. The examiner stated that the slot in the rear case 42, 42' has a receiving section which engages the engaging pin 11 and hold it in place. However, looking at Beak, this is not the case. Beak mentions guide rails 11 and 12 that are received by guide rib grooves 41 and guide ribs 42 which is clearly distinct from the present invention. As mentioned in claim 1 of Beak, a snapping device locks the printed circuit board 31 and not the guide rail 11 which the examiner corresponded to the engaging pin of the present invention. As shown by figure 4 and claim 1 of Beak, the first and second guide means are affixed not with the snapping device but by sides of the printed circuit board 31.

Furthermore, Beak does not teach or suggest a rear portion having at least one engaging portion at an upper front surface detachably engaging with the snap portion of the front casing. The examiner stated that Beak discloses pins around the periphery of the rear case which would be accepted by opening in the front case. However, looking at Beak, the unreferenced pins are not given any further description in the specification. Nothing in the drawings shows that there is an engaging portion accepting the pins. The pins could just possibly fit below the side walls of the front case for support without being accepting into an engaging portion. It is speculation by the examiner

that the pins of Beak would be engaged with an engaging portion on the other side. Beak from its disclosure does not teach an engaging portion for the pins. As shown above, since an alternative use of the pins is also possible, Beak clearly does not suggest an engaging portion as shown by the claims of the present invention. Furthermore, nothing in figure 1 shows that the pins of Beak are snap portions. No snapping action is taught or suggested by figure 1 of Beak.

Therefore, in view of foregoing amendments and remarks, the applicant respectfully requests that the examiner withdraw the rejection of claims 1, 16, and 21.

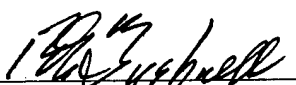
PRIOR ART NOT RELIED UPON

The prior art reference (or references when combined) made of record and relied upon do not teach or suggest all the claim limitations of the present claimed invention. Respectfully, the prior art made of record and not relied upon, do not form a bases for 35 U.S.C. §102 or 35 U.S.C. §103 rejections.

In view of the foregoing amendments and remarks, all claims are deemed to be allowable and this application is believed to be in condition to be passed to issue. If there are any questions, the examiner is asked to contact the applicant's attorney.

No fees are incurred by this Amendment. Should there be any other fees, the Commissioner is authorized to charge Deposit Account No. 02-4943 and advise the undersigned attorney accordingly.

Respectfully submitted,


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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

Please amend claim 7, as follows:

1 7. (Amended) The monitor of claim 6, wherein when the front and rear casing are integrally
2 engaged, a certain gap is formed between the front and rear casings, so that a certain tool [such as]
3 including a driver is inserted into the gap when disassembling the front and rear casings.